

INTERGOVERNMENTAL AGREEMENT

between
Coconino County Community College District
and
City of Flagstaff

for Sharing of Resources

This **INTERGOVERNMENTAL AGREEMENT** ("Agreement") is entered into this ____ day of _____, 20__ by and between **COCONINO COUNTY COMMUNITY COLLEGE DISTRICT**, an Arizona community college district, with offices at 2800 South Lone Tree Road, Flagstaff, Arizona ("College"), and the **CITY OF FLAGSTAFF**, an Arizona municipal corporation, with offices at 211 West Aspen Avenue, Flagstaff, Arizona ("City"). College and City may be individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS:

A. College and City each engage in training and education of firefighters and emergency medical technicians; and

B. College wishes to utilize City's Firefighting Training Facility ("FTF") to conduct training and education classes; and

C. City wishes to use College's facilities and equipment for training and education in emergency response; and

D. City is willing to make the FTF available to College for training and education purposes, subject to the terms and conditions set forth in this Agreement; and

E. College is willing to make classroom space and equipment available to City for training and education purposes, subject to the terms and conditions set forth in this Agreement; and

F. College and City are authorized to enter into Intergovernmental Agreements pursuant to A.R.S. § 11-952.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, the parties hereby agree as follows:

1. City's Obligations.

City agrees as follows:

- 1.1 Use of Fire Training Facility. City shall make the FTF available to College, at no charge, for educational and training purposes, subject to the provisions of this Agreement.
- 1.2 City Liaison. City will appoint a liaison as a point of contact for College and to coordinate College's use of the FTF.
- 1.3 College's Policies and Procedures. City agrees to abide by and enforce College's policies and procedures when City uses College classroom space, facilities, and equipment.

2. College's Obligations.

College agrees as follows:

- 2.1 Classroom Space on Lone Tree Campus. College shall make classroom space and equipment on College's Lone Tree Road Campus available to City, at no charge, for fire science educational and training purposes when requested by City; provided such scheduling and use of classroom space and equipment does not interfere with previously scheduled College classes.
- 2.2 Request for Use of FTF. College agrees to provide, at or before the beginning of each semester according to College's academic calendar, a written request for use of the FTF on specific dates and times with a list of equipment needed for each class session.
- 2.3 Conduct of Training and Education Classes. College agrees to conduct its training and education classes and programs at the FTF in a manner consistent with City's and Flagstaff Fire Department ("FFD") policies and procedures. College agrees that all drills and exercises will follow FFD policies and procedures.
- 2.4 Return of Equipment; Damage. College agrees that its designated Safety Officer will oversee the use and transportation of all City equipment and vehicles utilized by College during any and all College training activities. The Safety Officer shall report in writing any and all damage to FTF equipment, vehicles, or the FTF facility to the On-Duty Battalion Chief. The Safety Officer and College lead instructor will do a facility walk through and safety briefing before each class.
- 2.5 Fuel and Propane Costs and Use.
 - a. College agrees to reimburse City for all costs and expenses associated with fuel used or consumed during College training activities that utilize a City or FTF vehicle. For purposes of calculating this reimbursement, the Parties agree that the amount of fuel used or consumed will be approximately eight (8) gallons for a full-day event; provided, however, College's actual fuel use and consumption will be monitored and

confirmed by City during College drills and training exercises and reimbursements to City will be based on actual fuel pricing at the time of the drills and training exercises.

- b. College agrees to purchase and/or replace all propane used or consumed during College drills and training exercises. College's propane use and consumption will be monitored and confirmed by City during College drills and training exercises. College agrees to purchase and/or replace the propane used or consumed at least once each semester.
 - c. In the event of any dispute or controversy arising under this Section 2.5, the Parties agree to resolve such dispute or controversy under the provisions of Section 9 on Mediation and Arbitration.
- 2.6 Materials and Supplies. Except as provided in Section 2.5 on Fuel and Propane Costs and Use, College agrees to provide all expendable or consumable supplies and materials utilized during College's drills and training exercises. These supplies and materials include, but are not limited to:
- A. Foam
 - B. Liquid Smoke
 - C. Fire Extinguishers
 - D. Mannequins
 - E. Extrication vehicles
- 2.7 Condition of FTF after Use. Upon completion of any educational or training session or class at the FTF, College will return FTF and its adjacent grounds and classroom to the condition they were in at the start of the session or class. College agrees to remove all College equipment, materials, supplies, and other items from the FTF, unless otherwise agreed to by the On-Duty Battalion Chief.
- 2.8 Insurance. College agrees to maintain sufficient liability and workers compensation insurance to cover any injuries sustained by College staff or students. The college further agrees to carry sufficient insurance to cover repairs to or replacement of any City-owned equipment, tools, or vehicles caused by College students or instructors during these training activities.
- 2.9 List of Fire Science Instructors. Prior to the start of each semester under College's academic calendar, College will provide City with a list of College's fire science instructors, their qualifications, and their employing agency. If, during the semester, any of College's fire science instructors change or College learns of any changes to any information included on such list, College shall provide an updated list and/or information to City.
- 3. Mutual Obligations of the Parties.**

City and College agrees as follows:

3.1 College Instructional Sessions at the FTF.

- a. Safety Officers. College and City acknowledge and agree that certain instructional staff employed by College are also employed as firefighting personnel by City. College and City further acknowledge and agree that a designated safety officer must monitor and oversee all College drills and training exercises at FTF (the “Safety Officer”). For efficient and economical use of personnel employed by both College and City, College and City agree that:
 - (1) The Safety Officer must, at all times, be a qualified firefighter employed by City;
 - (2) College may designate an instructional staff member as the Safety Officer for any given College drill, training exercise, session, or classes at the FTF if the instructional staff member is also a qualified firefighter employed by City; and
 - (3) If, for any reason, College is unable to designate a Safety Officer who is both an instructional staff member of College and a qualified firefighter employed by City, City agrees to provide a qualified firefighter to serve as the Safety Officer provided by City, subject to reimbursement by College for the cost of such qualified firefighter as provided herein.
 - (4) If City provides a qualified firefighter to serve as the Safety Officer, he cost shall be reimbursed at the “burden rate” for the assigned firefighter, which will be calculated by the hourly pay rate for the assigned firefighter multiplied by the number of hours worked, plus all employee-related expenses associated with the wages and hours worked. In the event of any dispute or controversy related to the calculation of this reimbursement, the Parties agree to resolve such dispute or controversy under the provisions of Section 9 on Mediation and Arbitration.
- b. Engineers. College and City acknowledge and agree that certain instructional staff employed by College are also employed as firefighting personnel by City. College and City further acknowledge and agree that only a qualified firefighting engineer may operate a City vehicle during all College drills and training exercises at FTF (the “Engineer”), and that no College instructor or student who is not a qualified firefighting engineer employed by City may operate a City vehicle. For efficient and economical use of personnel employed by both College and City, College and City agree that:
 - (1) The Engineer must, at all times, be a qualified firefighting engineer employed by City;

- (2) College may designate an instructional staff member as the Engineer for any given College drill, training exercise, session, or classes at the FTF if the instructional staff member is also a qualified firefighting engineer employed by City;
 - (3) The Engineer may, but is not required to be, the same College instructional staff member designated to serve as Safety Officer; and
 - (4) If, for any reason, College is unable to designate an Engineer who is both an instructional staff member of College and a qualified firefighting engineer employed by City, City agrees to provide a qualified firefighting engineer to serve as the Engineer subject to reimbursement by College for the cost of such qualified firefighter as provided herein.
 - (5) If City provides a qualified firefighter to serve as the Engineer, the cost shall be reimbursed at the “burden rate” for the assigned firefighter, which will be calculated by the hourly pay rate for the assigned firefighter multiplied by the number of hours worked, plus all employee-related expenses associated with the wages and hours worked. In the event of any dispute or controversy related to the calculation of this reimbursement, the Parties agree to resolve such dispute or controversy under the provisions of Section 9 on Mediation and Arbitration.
- c. Pre-Approval of Designated Safety Officers and Engineers. The Parties agree that, prior to the start of each semester under College’s academic calendar, a list of College’s designated Safety Officers and Engineers will be submitted to City for approval. City shall review and either approve or disapprove individual College designees based on acceptable standards and qualifications to serve as a Safety Officer and/or Engineer. Such approval or disapproval shall be completed and returned to College prior to the start of College’s semester term. If, at any time, a pre-approved Safety Officer or Engineer is unable to serve in such capacity, either temporarily or for the remainder of the semester, the Parties may agree on another individual to serve a Safety Officer or Engineer, which may include a qualified firefighter to serve as Safety Officer or Engineer provided by City, subject to reimbursement by College as provided in Sections 3.1(a)(4) and 3.1(b)(5).
- d. Safety and Operations During College Instructional Sessions at FTF. College and City agree that safety shall be a paramount concern during all College drills and training exercises at FTF. City and College further agree that the Safety Officer may, at any time, stop any College drill or training session that the Safety Officer determines is unsafe or to confirm whether FTF operational and safety policy and procedures are being followed and maintained. College and City also agree that establishing and maintaining

safe operations during College drills and safety exercises includes adherence to Sections 3.1(a), (b), and (c) herein above.

3.2 Employees of College and City.

- a. Employees of College. Throughout the term of this Agreement, an individual employed as an instructor by College shall remain an employee of College and subject to the terms and conditions of the instructor's employment contract and College policy, but shall also be subject to continuing approval by City under the terms and conditions of this Agreement. Should a College instructor violate City policy or procedure, City may withdraw its approval of the instructor under the terms and conditions of this Agreement. Upon such withdrawal of approval, College shall propose another qualified instructor and notify City in writing of the proposed substitute, who must be approved or disapproved in writing by City pursuant to the terms of this Agreement.
- b. Employees of City. Throughout the term of this Agreement, an individual employed by City as a firefighter shall remain an employee of City and subject to the terms and conditions of the individual's employment contract and City policy, but shall also be subject to continuing approval by College under the terms and conditions of such individual's instructional or other contract with College, if any, and this Agreement. Should a City firefighter violate College policy or procedure, College may take any action authorized under College policy and procedure and such individual's contract with College, if any, and under this Agreement.
- c. Operations, Supervision, and Employment-Related Expenses. Each Party agrees to be responsible for the conduct of its operations, the performance of obligations under this Agreement, and the actions of its own personnel while performing services under this Agreement. Each party shall be solely responsible for supervision, daily direction, control of payment of salary (including withholding for payment of taxes and social security), workers' compensation, and disability and other benefits.
- d. Worker's Compensation. The Parties agree that this Agreement does not create or effect an intergovernmental joint operation, co-employment, or employment-employee arrangement. Nonetheless, the Parties further agree to comply with the requirements of Arizona's worker's compensation statute, Arizona Revised Statutes, Title 23, Chapter 6, including the provisions of A.R.S. § 23-1022(D)-(E) regarding intergovernmental agreements and notice to employees.

3.3 Facility Use Only. The Parties agree that this Agreement is limited to the express purposes and uses set forth in this Agreement and does not imply or establish any

joint educational or instructional classes or programs, nor imply or establish any dual enrollment or dual credit classes or programs.

- 3.4 Risk to Health or Safety. If either Party has reason to suspect that any activities undertaken pursuant to this Agreement present an unreasonable risk to the health or safety of students or is contrary to the Party's mission or operations, that Party may request that a meeting between the Parties be convened within forty-eight (48) hours and promptly confirm the meeting in writing. In such circumstances, the Parties to this Agreement will attempt to reconcile differences within five (5) working days of such meeting. If reconciliation is not achieved within the five (5) day period, this Agreement will automatically terminate.
- 3.5 Confidential Records. The Parties do not anticipate sharing confidential records of any nature by either Party with the other Party. Nonetheless, the Parties agree that all student records shall be kept confidential and may be shared only in accordance with the Family Education Rights and Privacy Act (20 U.S.C. §1232(g)) ("FERPA") and regulations adopted pursuant to FERPA, the Individuals with Disabilities Education Act ("IDEA") and regulations adopted thereunder, the applicable portions of the Health Insurance Portability and Accountability Act of 1996 (Pub.L. 104-191) ("HIPAA"), and applicable state laws and College policies controlling the disclosure of personally identifiable information from a student's education records. City acknowledges and agrees that this Section 3.5 extends to City employees who are also employed by College in an instructional capacity.
- 3.6 Storage and Use of College's Mobile Air Resupply Unit. The Parties acknowledge and agree that College is the owner of a mobile five-stage air compression system for filling self-contained breathing apparatuses used by fire fighters that is mounted on a trailer (identified by serial no. 5E2B11626E1049328) (the "Air Trailer"). City agrees that, during the term of this Agreement, College may store its Air Trailer in a City fire station to be determined by agreement of the Parties, and College agrees that City may use College's Air Trailer for emergency response and training within City's jurisdiction or the jurisdiction of any of City's mutual-aid partners. City's Fire Science Coordinator or designee will oversee the use and transportation of College's Air Trailer and all related equipment when utilized by City during trainings or incident response. The Fire Science Coordinator will report in writing any and all damage to College's Air Trailer and all related equipment to the Dean of Career and Technical Education promptly upon learning of such damage.
- 3.7 Temporary Storage Box. City agrees to allow College to place a temporary storage box onsite at FTF to allow College to store training supplies and equipment. College agrees that the temporary storage box must comply with all City ordinances, the Flagstaff City Code, and Flagstaff Fire Department policies and procedures. College agrees that City shall have the right to remove the

temporary storage box if not in compliance after College has been given an opportunity to cure any such non-compliance.

- 3.8 Disposition of Property. The Parties do not contemplate joint acquisition of any property pursuant to this Agreement. Upon termination of this Agreement, any equipment furnished or purchased by College for use in drills, training exercises, or classes at FTF shall be retained by College. Upon termination of this Agreement, any equipment furnished or purchased by City for use while utilizing College's classroom space and facilities shall be retained by City.

4. Effective Date and Term.

This Agreement shall become effective upon the execution of two (2) originals by the parties and shall continue in effect for a period of three (3) years from the date of execution. The Agreement shall be renewed automatically for two (2) additional one (1) year periods, unless, at least thirty (30) days prior to expiration of the Agreement, either Party notifies the other in writing of its decision to not renew the Agreement.

5. Termination

- 5.1 Either Party may terminate this Agreement immediately upon written notice if the other Party defaults in any obligation imposed on it under this Agreement and does not cure any such default within twenty (20) days after receipt of written notice from the Party not in default.
- 5.2 This Agreement may be terminated by either Party without cause upon thirty (30) days' written notice.

6. Conflict of Interest

The Parties agree that this Agreement may be cancelled for conflict of interest in accordance with Section 38-511 of the Arizona Revised Statutes.

7. Notices

Unless otherwise specified herein, any notice or other communication required or permitted to be given under this Agreement shall be in writing and sent to the address given below for the Party to be notified, or to such other address, notice of which is given in compliance with this section:

If to the City:

If to the College:

Fire Chief
Flagstaff Fire Department
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

Director of Purchasing & Auxiliary
Services
Coconino Community College
2800 S. Lone Tree Road
Flagstaff, Arizona 86005

8. Indemnification.

Each Party (as “Indemnitor”) agrees to indemnify, defend, and hold harmless the other Party (as “Indemnitee”) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (collectively referred to as “claims”) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims that result in vicarious or derivative liability to the Indemnitee, are caused by the negligence, recklessness, or intentional wrongful conduct of the Indemnitor, its officers, officials, agents, employees, or volunteers.

9. Dispute Settlement.

9.1 Meet and Confer. If either Party believes the other Party has breached this Agreement or otherwise has not complied with its obligations under this Agreement, the complaining Party may request an opportunity to meet and confer for the purpose discussing a mutually satisfactory resolution of the grievance or breach. Such meet-and-confer session shall occur within thirty (30) days of the request. The Parties each acknowledge their respective obligation to meet and confer in good faith.

9.2 Mediation. In the event that a dispute arises out of or relates to this Agreement and the dispute cannot be settled through negotiation, the Parties agree to first try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the Parties. Unless the Parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each Party shall bear its own costs in mediation. The Parties shall not be obligated to mediate if an indispensable party is unwilling to join the mediation.

9.3 Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Arizona. The Parties hereby submit to the original jurisdiction of those courts located within Coconino County, Arizona.

10. Integration; Modification.

Each of the parties acknowledges and agrees that it has not relied upon any statements, representations, agreements, or warranties except as expressed herein, and that this Agreement constitutes that parties' entire agreement with respect to the matters addressed herein. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are hereby superseded and merged in this Agreement. This Agreement may be modified or amended only by written agreement executed by authorized representatives of both parties.

11. Waiver.

No failure to enforce any condition or covenant of this Agreement shall imply or constitute a waiver of the right to insist upon performance of such condition or covenant, or of any other provision hereof, nor shall any waiver by either Party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach hereunder.

12. Severability.

In the event that a court of competent jurisdiction shall hold any part or provision of the Agreement void or of no effect, the remaining provisions of this Agreement shall remain in full force and effect, to the extent that the continued enforcement of such remaining terms shall continue to reflect substantially the intent of the parties hereto.

13. Non-Assignability.

Neither Party may assign any right or delegate a duty or responsibility under this Agreement without the prior written consent of the other Party.

14. Non-Appropriation.

In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of City or College to meet City's or College's obligations under this Agreement, the Party with an insufficient appropriation will notify the other party in writing of such occurrence, and this Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. No payments shall be made or due to the other party under this Agreement beyond the amounts appropriated and budgeted by City or College to fund the obligations of the parties under this Agreement.

15. No Third Party Beneficiaries.

The parties acknowledge and agree that the terms, provisions, conditions, and obligations of this Agreement are for the sole benefit of, and may be enforceable solely by, the Parties to this Agreement, and none of the terms, provisions, conditions, and obligations

of this Agreement are for the benefit of, or may be enforced by, any person or entity not a party to this Agreement.

16. Records and Retention Requirements.

The Parties shall retain all records related to this Agreement, and each party shall have the right to inspect all records of the other party pertaining to the Agreement. The Parties shall retain all records related to this Agreement for a period of time consistent with each Party's records retention policy. This record retention requirement shall remain in effect following expiration of this Agreement.

17. Governing Law.

This Agreement shall be construed under the laws of the State of Arizona and shall incorporate by reference all laws governing intergovernmental agreements and mandatory contract provisions of state agencies required by statute or executive order. All statutes and regulations referenced in this Agreement are incorporated herein as if fully stated in their entirety in the Agreement. Each Party agrees to comply with and be responsible for the provisions, the statutes, and the regulations set out in this Agreement.

18. Compliance with Non-Discrimination Laws.

To the extent applicable, the Parties shall comply with all College policies and State and Federal laws and regulations, including Executive Order 2009-09, which prohibit discrimination against any person based on race, religion, handicap, color, age, sex, sexual orientation, political affiliation or national origin, and the Parties shall prohibit discrimination in the employment or advancement in employment of a qualified person because of physical or mental disability including all applicable provisions of the Americans with Disabilities Act.

19. Authority to Contract.

Each party represents and warrants that it has full power and authority to enter into this Agreement, to perform its obligations under this Agreement, and has taken all required acts or actions necessary to authorize the execution and performance of the Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

City of Flagstaff

**Coconino County Community
College District**

By: Gerald W. Nabours, Mayor

By:

Attest:

Attest:

City Clerk

Approved as to form:

Approved as to form:

City Attorney

Attorney for the College